

**TESTIMONY OF
ENTERTAINMENT SOFTWARE ASSOCIATION
IN OPPOSITION TO MI SB 416**

The Entertainment Software Association appreciates the opportunity to submit testimony on SB 416. ESA members account for over 90% of the video games sold in the U S. Its members include companies like Electronic Arts, Microsoft, Lucas Arts, Sony as well as THQ which has a facility in the state.

The ESA opposes Senate bill 416. This legislation is unnecessary because the video game industry has created a successful self-regulatory program to rate its products through the Entertainment Software Rating Board (ESRB). The ESRB also provides rating information and works with retailers in support of their voluntary efforts to enforce this rating system.

Second, this legislation is unconstitutional because it restricts a minor's access to video games that are neither obscene nor harmful to minors under Michigan law or the First Amendment of the U.S. Constitution.

ESRB Rating System

Specifically, the ESRB is a voluntary rating system that provides consumers with information about the age appropriateness and content of video games. This system is recognized by the FTC as being the most comprehensive of any rating system for any entertainment medium in the country. The Kaiser Family Foundation recently released a national survey of parents that found the ESRB to be the most useful of all entertainment ratings systems.

The ESRB issues 6 age-based rating categories and they are: Early Childhood (Ages 3 and older), Everyone (Ages 6 and older), Everyone 10 (Ages 10 and older), Teen (Ages 13 and older), Mature (Ages 17 and older), and Adults Only (Limited to those 18 and older).

The ratings are supplemented with short phrases, called descriptors, that highlight the content of video games. There are over 30 descriptors. Together the rating and descriptors provide consumers and parents with the advance information they need to make informed purchase and rental decisions for their families.

Through the ESRB's retail partnership program, video game retailers are provided posters, brochures, shelf talkers and other in-store signage. They also are provided ratings information for other marketing channels that they may use to communicate with their customers such as websites, circulars and in-store magazines. The top retailers of computer and video games in the U.S., representing 90% of total sales volume, have committed to this program and have installed this signage in their stores. Another component of this program is encouraging retailers to adopt a policy to voluntarily enforce the ESRB rating system and provide training assistance to retail employees.

Educating adults is key. According to the FTC, adults are involved in the purchase of video games more than 8 out of 10 times. Our industry data show that adults are involved in the purchase over 90% of the time.

The Market Demographics: Adults Predominate

That isn't surprising since the average video game player is 30 years old and the average age of a video game buyer is 36 years old. This is not surprising given that a video game costs \$40 - \$60.

There's also a misperception that violent video games dominate the games on the market. A look at sales figures for 2004 shows that there is a broad array of family friendly titles on the best seller charts. In 2004, 13 out of the top 20 best selling video games received an "Everyone" rating, 2 were rated "Teen," and 5 were rated "Mature." In total, over 82% of the games sold last year were rated E or T (53% and 29%) and about 16% were rated M.

Popular titles include sports games such as such as Madden NFL, ESPN NFL and NBA Live; games based on movies like Spiderman 2; racing games like Need for Speed; and children's games like Pokemon and Mario.

Of the more than 10,000 video games that have been rated since the ESRB was created (1994), 65% have an E rating (24% are T) and 8 % have an M rating.

Constitutional Issues

We respectfully submit that the constitutional issues raised by this legislation are very serious. Video games are protected speech, receiving the same First Amendment protection as books, movies, music and television. Every court that has looked at this issue has held that attempts to regulate particular video game content – either through criminal or civil sanctions – is unconstitutional.

Prohibiting a minor's access to a video game based on its rating or depictions of violence will not survive judicial review. In addition to the expense involved in defending a law in a First Amendment challenge, federal law provides for reimbursement of attorneys' fees in lawsuits vindicating constitutional rights.

Over the past five years, government entities have been required to pay hundreds of thousands of dollars in attorney's fees after laws restricting video games were declared unconstitutional.

State of Research

It is important to look at the impact of video games on violent behavior of which much has been said. There is no consensus.

Let's look at what the U.S. Surgeon General, the FBI and others have said.

In 2001, the U.S. Surgeon General released a report on "Youth Violence" finding that youth violence is caused by numerous factors and targets lifestyle decisions, such as drugs, guns and gangs as the main culprits. The Surgeon General stated it was extremely difficult to distinguish between the relatively small long-term effects of exposure to media violence and those of other influences.

A report prepared by the FBI, entitled Lessons Learned listed thirty factors as indicators of violent acts by youth such as low self esteem, fascination with firearms and lack of family support. It did not list playing video games.

In 2000, the Washington State Department of Health conducted a comprehensive study that concluded "the research evidence is not supportive of a major public concern that violent video games lead to real-life violence."

The FTC in their 2000 Report, "Marketing Violent Product to Minors", looked at existing research including the joint statement made by the AMA, APA and other medical organizations and found that it was inconclusive. It noted that these organizations acknowledged that violent media was not the sole, or even necessarily the most important factor, contributing to youth aggression, social attitudes and violence. It found that a range of other factors, such as child abuse and neglect, bullying and drug use can cause youth violence.

Last summer, Dr. Olson, a Professor of Psychiatry at the Harvard Medical School, wrote in the *Journal of Academic Psychiatry* about serious flaws in existing video game research and concluded: "It's time to move beyond blanket condemnations and frightening anecdotes and focus on developing targeted educational and policy interventions based on solid data."

Even the *Journal of the American Medical Association* published research by Brian Vastag last fall finding that "Consensus is lacking on whether video games with violent content fuel aggressive behavior in children and adolescents."

Most recently, a new study by researchers Dmitri Williams and Marko Skoric funded by the University of Michigan found that there were no increased levels of aggression from online game play. This is the first long-term longitudinal study

on the effects of playing online violent video games.

Finally, every Court that has considered this issue has said that the research does not establish a compelling state interest justifying legislation.

Conclusion

The video game industry has an excellent rating system. The ESA is committed to working with retailers to encourage voluntary enforcement and educating consumers about the ratings system so they can make informed purchase decisions.

We stand ready to work with you in developing creative and effective educational programs to ensure that parents, the buyers of the vast majority of games for kids, use the tools available to make the right choices for their children. Collectively, we have a responsibility to educate and empower.

In the end, it's the responsibility of parents to decide what games are appropriate for their families.